

Bryan W. Shaw, Ph.D., *Chairman*
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Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 8, 2013

Ms. Adina Wiley
Air Permits Section (6PD-R)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Attn: Docket ID No. EPA--R06--OAR--2010-0612

Re: Approval and Promulgation of Implementation Plans; Texas; Public Participation for Air Quality Permit Applications: Proposed Rule.

Dear Ms. Wiley:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to respond to the United States Environmental Protection Agency's (EPA) proposal published in the December 13, 2012, edition of the *Federal Register* (FR) entitled: "Approval and Promulgation of Implementation Plans; Texas; Public Participation for Air Quality Permit Applications: Proposed Rule."

The new and amended rules submitted to EPA in July 2010 were adopted in response to EPA's notice proposing limited approval and limited disapproval of TCEQ's outstanding SIP revisions regarding public participation, published on November 26, 2008 (73 FR 72001, and which were withdrawn on November 5, 2010 (76 FR 68291). The TCEQ recognizes that EPA has thoroughly reviewed and proposed approval of most of the rules submitted in 2010, as well as in earlier submittals, stating that all outstanding issues were adequately addressed. The TCEQ supports EPA's determination that TCEQ meets, and in some cases exceeds, the minimum federal requirements and therefore has proposed full approval of public participation rules submitted in 1998, 1999, 2010 and 2011.

EPA correctly observes on page 74314 that the comment period runs for 30 days after the last publication of the Notice of Application and Preliminary Decision (commonly referred to as NAPD), and, by proposing approval of these rules, acknowledges that the TCEQ's comment period for minor and major new source review permit applications that are subject to the requirements of Chapters 39, 55 and 116 meets the minimum federal requirement for a thirty day period after the draft permit is made available for review. EPA also correctly observes that the Notice of Receipt of Application and Intent to Obtain a Permit (commonly referred to as NORI) is a unique element to the Texas

Re: Texas Public Participation Rules

permit program that is not federally required. It is important to also acknowledge that TCEQ's comment period also exceeds federal requirements. Comments are considered timely if filed any time after NORI published through the end of the comment period. This timeline encompasses the administrative completeness determination, the NORI publication period, the technical review period, as well as the comment period associated with the NAPD, which may be more than 30 days if alternate language publication is required and that publication is after the English language publication. Therefore, the state comment period greatly exceeds the federal requirement in length of time, thus affording greater opportunity for public participation.

TCEQ recognizes that EPA is taking no action on the public participation rules for portable facilities (adopted February 10, 2010) and Future Gen (adopted February 22, 2006), both of which are associated with rulemakings for permitting programs which have not yet been reviewed by EPA, as well as the public participation rules for new flexible permit and flexible permit amendment applications (adopted June 2, 2010).

We also understand that EPA is taking no action on the October 25, 1999 submittals of 30 Tex. Admin. Code §§ 116.111(a)(2)(K) and 116.116(b)(3), both of which reference hazardous air pollutant permitting and were returned to TCEQ by EPA on June 29, 2011. EPA's letter stated that Federal Clean Air Act § 112(g) requirements are not approved in the SIP nor delegated to the states because states certify compliance with EPA's implementing regulations.

Finally, we agree with EPA's decision to take no action on 30 Tex. Admin. Code § 39.405(h)(1)(B). It appears that EPA has inadvertently included it in the proposed SIP approval because TCEQ did not include this rule as part of its submittal.

I look forward to the expeditious final approval of these SIP revisions. If you have any questions concerning these comments, please contact Ms. Janis Hudson, Environmental Law Division, Office of Legal Services, (512) 239-0466, or at janis.hudson@tceq.texas.gov.

Sincerely,



Zak Covar
Executive Director